

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**STACEY GALPERIN, MIRIAM ROCEK, HANNAH SHAFFER, HEIDI SHAFFER, and MARLENE DEVONSHIRE, as the Natural Guardian of MEGHAN DEVONSHIRE, a minor**

**Plaintiffs,**

**V.**

**DELAWARE STATE POLICE  
SERGEANT MARK DIJACOMO, and  
JANE DOE**

**Defendants.**

1  
 2  
 3  
 4  
 5  
 6  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28  
 29  
 30  
 31  
 32  
 33  
 34  
 35  
 36  
 37  
 38  
 39  
 40  
 41  
 42  
 43  
 44  
 45  
 46  
 47  
 48  
 49  
 50  
 51  
 52  
 53  
 54  
 55  
 56  
 57  
 58  
 59  
 60  
 61  
 62  
 63  
 64  
 65  
 66  
 67  
 68  
 69  
 70  
 71  
 72  
 73  
 74  
 75  
 76  
 77  
 78  
 79  
 80  
 81  
 82  
 83  
 84  
 85  
 86  
 87  
 88  
 89  
 90  
 91  
 92  
 93  
 94  
 95  
 96  
 97  
 98  
 99  
 100  
 101  
 102  
 103  
 104  
 105  
 106  
 107  
 108  
 109  
 110  
 111  
 112  
 113  
 114  
 115  
 116  
 117  
 118  
 119  
 120  
 121  
 122  
 123  
 124  
 125  
 126  
 127  
 128  
 129  
 130  
 131  
 132  
 133  
 134  
 135  
 136  
 137  
 138  
 139  
 140  
 141  
 142  
 143  
 144  
 145  
 146  
 147  
 148  
 149  
 150  
 151  
 152  
 153  
 154  
 155  
 156  
 157  
 158  
 159  
 160  
 161  
 162  
 163  
 164  
 165  
 166  
 167  
 168  
 169  
 170  
 171  
 172  
 173  
 174  
 175  
 176  
 177  
 178  
 179  
 180  
 181  
 182  
 183  
 184  
 185  
 186  
 187  
 188  
 189  
 190  
 191  
 192  
 193  
 194  
 195  
 196  
 197  
 198  
 199  
 200  
 201  
 202  
 203  
 204  
 205  
 206  
 207  
 208  
 209  
 210  
 211  
 212  
 213  
 214  
 215  
 216  
 217  
 218  
 219  
 220  
 221  
 222  
 223  
 224  
 225  
 226  
 227  
 228  
 229  
 230  
 231  
 232  
 233  
 234  
 235  
 236  
 237  
 238  
 239  
 240  
 241  
 242  
 243  
 244  
 245  
 246  
 247  
 248  
 249  
 250  
 251  
 252  
 253  
 254  
 255  
 256  
 257  
 258  
 259  
 260  
 261  
 262  
 263  
 264  
 265  
 266  
 267  
 268  
 269  
 270  
 271  
 272  
 273  
 274  
 275  
 276  
 277  
 278  
 279  
 280  
 281  
 282  
 283  
 284  
 285  
 286  
 287  
 288  
 289  
 290  
 291  
 292  
 293  
 294  
 295  
 296  
 297  
 298  
 299  
 300  
 301  
 302  
 303  
 304  
 305  
 306  
 307  
 308  
 309  
 310  
 311  
 312  
 313  
 314  
 315  
 316  
 317  
 318  
 319  
 320  
 321  
 322  
 323  
 324  
 325  
 326  
 327  
 328  
 329  
 330  
 331  
 332  
 333  
 334  
 335  
 336  
 337  
 338  
 339  
 340  
 341  
 342  
 343  
 344  
 345  
 346  
 347  
 348  
 349  
 350  
 351  
 352  
 353  
 354  
 355  
 356  
 357  
 358  
 359  
 360  
 361  
 362  
 363  
 364  
 365  
 366  
 367  
 368  
 369  
 370  
 371  
 372  
 373  
 374  
 375  
 376  
 377  
 378  
 379  
 380  
 381  
 382  
 383  
 384  
 385  
 386  
 387  
 388  
 389  
 390  
 391  
 392  
 393  
 394  
 395  
 396  
 397  
 398  
 399  
 400  
 401  
 402  
 403  
 404  
 405  
 406  
 407  
 408  
 409  
 410  
 411  
 412  
 413  
 414  
 415  
 416  
 417  
 418  
 419  
 420  
 421  
 422  
 423  
 424  
 425  
 426  
 427  
 428  
 429  
 430  
 431  
 432  
 433  
 434  
 435  
 436  
 437  
 438  
 439  
 440  
 441  
 442  
 443  
 444  
 445  
 446  
 447  
 448  
 449  
 450  
 451  
 452  
 453  
 454  
 455  
 456  
 457  
 458  
 459  
 460  
 461  
 462  
 463  
 464  
 465  
 466  
 467  
 468  
 469  
 470  
 471  
 472  
 473  
 474  
 475  
 476  
 477  
 478  
 479  
 480  
 481  
 482  
 483  
 484  
 485  
 486  
 487  
 488  
 489  
 490  
 491  
 492  
 493  
 494  
 495  
 496  
 497  
 498  
 499  
 500  
 501  
 502  
 503  
 504  
 505  
 506  
 507  
 508  
 509  
 510  
 511  
 512  
 513  
 514  
 515  
 516  
 517  
 518  
 519  
 520  
 521  
 522  
 523  
 524  
 525

**Civil Action No.: 06-359 (GMS)**

## JURY TRIAL DEMANDED

## JOINT STATUS REPORT

Pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule of Civil Procedure 16.2(b), and in accordance with the Order of the Court dated August 8, 2005, Stacey Galperin, Miriam Rocek, Hannah Shaffer, Heidi Shaffer, and Marlene Devonshire, as the natural guardian of Meghan Devonshire (collectively, “Plaintiffs”) and Delaware State Police Sergeant Mark DiJiacomo (“Sgt. DiJiacomo”) (collectively, “the Parties”) hereby provide the following Joint Status Report.

## 1. Jurisdiction and Service

The Parties have agreed that this Court has subject matter jurisdiction based on the federal claims asserted and pendant jurisdiction over the common law claims. Sergeant DiJiacomo is subject to the Court's personal jurisdiction, as are all Plaintiffs. The identity of Jane Doe is unknown, but Plaintiffs have alleged that she committed tortious actions against Delaware residents while in Delaware and that these tortious

actions within the forum led directly to the suit against her. Accordingly, the Parties anticipate that she also will be subject to the personal jurisdiction of the Court.

Sgt. DiJiacomo has been served. Because the Parties have not yet ascertained the identity of Jane Doe, she has not yet been served.

## **2. Substance of the Action**

### Plaintiffs' Allegations

On August 10, 2005, Plaintiffs planned to attend a book signing and discussion by Sen. Rick Santorum at the Barnes & Noble. Before the event commenced, Plaintiffs were threatened with arrest and ejected by Sgt. DiJiacomo, who was present as a guard for the event. Two of Plaintiffs, Plaintiffs Galperin and Rocek, were arrested by Sgt. DiJiacomo. No Barnes & Noble employee or agent instructed Plaintiffs to leave or directed Sgt. DiJiacomo to eject them.

In addition, Sgt. DiJiacomo was subsequently informed by another Plaintiff, Mrs. Shaffer, that Barnes & Noble had no objection to Plaintiffs returning to the store, but Sgt. DiJiacomo replied by threatening her with arrest and told her that Barnes & Noble had no authority to allow Plaintiffs to return to the store.

Plaintiffs allege that they were deprived of their rights to free speech, peaceable assembly, and petition for the redress of grievances under the First Amendment to the United States Constitution and under the Delaware Constitution. Plaintiffs further allege that Sgt. DiJiacomo conspired with defendant Jane Doe to so violate their rights. Plaintiffs Galperin and Rocek also allege that Sgt. DiJiacomo unlawfully arrested them, in violation of Delaware constitutional and common law and the Fourth Amendment to

the United States Constitution, and that Sgt. DiJiacomo conspired with defendant Jane Doe to this end.

Defendant DiJiacomo's Contentions

Barnes and Noble arranged through the Delaware State Police for an off-duty police officer to be assigned to the store for the purposes of the appearance of Senator Santorum to sign copies of a book. Sgt. DiJiacomo was the officer assigned to the bookstore. He contacted the bookstore manager, who advised him as to security issues and the arrangements for the book-signing by the Senator. Sgt. DiJiacomo also met with two female members of the Senator's staff to discuss security and arrangements. The members of the Senator's staff then met with the bookstore manager, who advised Sgt. DiJiacomo of changes in the arrangements and instructed him as to how members of the public would be able to have books signed. Both the members of the Senator's staff and the bookstore manager were concerned about the risk of disruptive behavior on the premises.

The bookstore manager asked Sgt. DiJiacomo to intervene after receiving complaints from customers and the members of the Senator's staff about the conduct of some of the plaintiffs. Sgt. DiJiacomo was able to engage in a dialogue with the plaintiffs, and to explain the rules for the book-signing that had been established by the bookstore manager and the Senator's staff.

At no time was anyone arrested, detained, or "ejected" from the bookstore. Various persons left voluntarily, and others agreed to participate within the rules established by the bookstore manager. At one point Sgt. DiJiacomo spoke to the father of one of the plaintiffs, in an effort to explain the rules imposed by Barnes and Noble in

conjunction with the Senator's staff representatives. Each of the plaintiffs eventually cooperated voluntarily with Sgt. DiJiacomo while protesting verbally that the constraints imposed by Barnes and Noble and the Senator were unfair.

At all times Sgt. DiJiacomo acted with restraint and served as an intermediary between the bookstore manager and the plaintiffs, effectively preventing the situation from getting out of hand. At all times Sgt. DiJiacomo respected the rights of the plaintiffs and took time to explain in detail the reasons for the actions of the Senator's staff and the bookstore, and the potential consequences facing anyone who would seek to disrupt the event or pose a threat to security.

**3. Identification of Factual and Legal Issues**

Whether Sgt. DiJiacomo acted at the direction of Barnes & Noble management and whether Plaintiffs were acting in a disruptive manner or threatening to disrupt the book-signing.

Whether Sgt. DiJiacomo ejected Plaintiffs from the book signing because of their political beliefs.

Whether Plaintiffs suffered a deprivation of their rights under the First Amendment to the U.S. Constitution and under the Delaware Constitution.

Whether Sgt. DiJiacomo arrested Plaintiffs Galperin and Rocek.

Whether Sgt. DiJiacomo had probable cause to arrest Plaintiffs Galperin and Rocek.

Whether Plaintiffs Galperin and Rocek suffered a deprivation of their rights under the Fourth Amendment to the U.S. Constitution and under the Delaware Constitution.

Whether Sgt. DiJiacomo conspired with others to deprive Plaintiffs' of their rights under the U.S. and Delaware Constitutions.

Whether Sgt. DiJiacomo acted with maliciousness or wanton, reckless disregard for Plaintiffs' constitutional rights.

Whether Sgt. DiJiacomo is entitled to either absolute or qualified immunity.

**4. Narrowing of Issues**

The Parties agree that prompt discovery is likely to narrow the issues and to assist them in identifying any issues that could be the subject of dispositive or partially dispositive motions.

**5. Relief**

Plaintiffs seek declaratory judgment; nominal, compensatory and punitive damages; attorneys' fees and costs; and such other relief as the Court deems just and proper. Plaintiffs have not calculated a specific sum of damages that they seek.

**6. Amendment of Pleadings and**

**7. Joinder of Parties**

The Parties anticipate that the Complaint will have to be amended once the identity of Jane Doe is determined. In addition, it is possible that Plaintiffs will seek to amend the Complaint to name other individuals with whom Sgt. DiJiacomo conferred with respect to his actions, to wit, the Barnes & Noble bookstore manager and unknown representatives of Senator Santorum.

**8. Discovery**

The Parties do not anticipate that discovery will be extensive or voluminous. The Parties contemplate limited document requests and interrogatories and approximately 10-

15 depositions, many of which may not require a full day to complete. The Parties have already engaged in an informal exchange of documents and anticipate that they will continue to be able to resolve most discovery issues efficiently and expeditiously. The focus of initial discovery will be on the identity of Jane Doe. Should this prove difficult to ascertain, additional discovery might be required and delays might be occasioned.

**9. Estimated Trial Length**

Although it will be some time before a precise estimate is possible, the Parties anticipate a trial of two to four days. It is too early to determine whether expedited trial methods will be necessary or appropriate. The Parties do not anticipate that bifurcation of the trial will be appropriate.

**10. Jury Trial**

Plaintiffs have demanded a jury trial.

**11. Settlement**

The Parties have preliminarily discussed settlement, but at the present are unable to reach any agreement, particularly because one defendant has not yet even been identified. The Parties are optimistic that after some discovery, settlement may be possible, but believe that alternative dispute resolution or mediation by a Magistrate will only be fruitful once discovery has proceeded further. Sgt. DiJiacomo believes that it would be pointless to discuss settlement without representatives of the Senator and the bookstore present to participate.

**12. Other Matters**

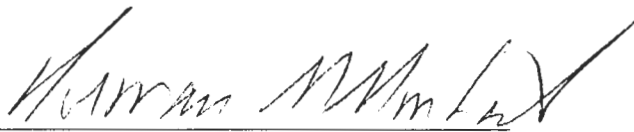
The Parties are optimistic that they will be able to cooperate to ensure the just, speedy and inexpensive determination of this action by proceeding on a reasonable trial

schedule and respectfully suggest a discovery period of approximately six months, followed by thirty days each for dispositive motions and the responses thereto, followed in turn by sufficient time for the Court to rule on such motions. The Parties anticipate that they will be prepared for trial in approximately one year. As noted above, the proposed schedule is predicated on the determination of Jane Doe's identity in the initial phases of discovery. If her identity proves particularly difficult to ascertain, the completion of discovery could be delayed, which could mean that a later trial date is required.

**13. Certification of Conference**

The undersigned counsel for the parties have conferred about each of the foregoing matters and are in agreement with the foregoing statements regarding them.

ROSENTHAL, MONHAIT, & GODDESS, P.A.

By 

Norman M. Monhait (Attorney ID No. 1040)  
919 Market St., Suite 1401  
P.O. Box 1070  
Wilmington, DE 19899  
(302) 656-4433  
(302) 658-7567 - facsimile

HANGLEY ARONCHICK SEGAL & PUDLIN  
Gordon A. Einhorn (Appearing Pro Hac Vice)  
Paul W. Kaufman (Appearing Pro Hac Vice)  
30 North Third Street, Suite 700  
Harrisburg, PA 17101  
(717) 364-1004  
(717) 364-1020 – facsimile

*Of Counsel:*



AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA

Mary Catherine Roper (Pro Hac Vice Pending)  
P.O. Box 40008  
Philadelphia, PA 19106  
(215) 592-1513 x. 116  
(215) 592-1343 – facsimile

Witold Walczak  
313 Atwood Street  
Pittsburgh, PA 15213  
(412) 681-7736  
(412) 681-8707 – facsimile

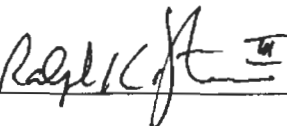
Seth Kreimer  
3400 Chestnut Street  
Philadelphia, PA 19104  
(215) 898-7447  
(215) 573-2025 – facsimile

AMERICAN CIVIL LIBERTIES FOUNDATION OF DELAWARE

Julia Graff (Attorney ID No. 4708)  
100 W. 10th Street, Suite 309  
Wilmington, DE 19801  
(302) 654-5326 x. 103  
(302) 654-3689 – facsimile

*Attorneys for Plaintiffs*

State of Delaware Department of Justice

By  \_\_\_\_\_

Ralph K. Durstein III, ID #912  
Deputy Attorney General  
Carvel State Office Building  
820 N. French St., 6<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 577-8510  
*Attorney for Defendant Delaware State Police  
Sergeant Mark DiJiacomo*